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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT - 3 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of the Commission's Rules )  
to Establish Competitive Service )  
Safeguards for Local Exchange )  
Carrier Provision of Commercial )  
Mobile Radio Services )

WT Docket No. 96-162

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to Section 1.415 of the Commission's Rules<sup>1</sup> and in response to the Notice of Proposed Rulemaking, Order on Remand, and Waiver Order released August 13, 1996 (FCC 96-319) ("NPRM"), hereby submits comments on the Commission's proposals regarding implementation of competitive safeguards for the provision of commercial mobile radio services ("CMRS") by small and rural local exchange carriers ("LECs"). RCA agrees with the Commission's conclusion that the costs associated with imposing additional regulatory burdens on small and rural LEC-affiliated cellular service providers far outweigh any benefit which arguable might be derived. Accordingly, the requirements which may be adopted for Tier 1 companies and their affiliates should not apply to rural LECs and their affiliates. In support thereof, RCA submits the following:

**I. Introduction**

RCA is an association representing the interests of small and rural cellular licensees providing commercial services to

<sup>1/</sup> 47 C.F.R. § 1.415.

subscribers throughout the nation. Its member companies provide cellular service to predominantly rural areas where more than 6 million people reside. Formed in 1993 to address the distinctive issues facing rural cellular service providers, the membership of RCA includes affiliates of the only entities originally eligible for "B" block cellular licenses -- wireline telephone companies -- as well as rural "A" block carriers. Accordingly, RCA member companies will be affected directly by the outcome of this proceeding; RCA is, therefore, a party in interest.

In this proceeding, the Commission focuses on the appropriate regulatory treatment of the Bell Operating Companies ("BOCs") in light of the Sixth Circuit's Cincinnati Bell decision<sup>2</sup> and specific provisions of the Telecommunications Act of 1996<sup>3</sup> relating to BOC interLATA services, BOC joint marketing, and the protection of customer proprietary information ("CPNI").<sup>4</sup> The Commission also seeks comment on the impact of this proceeding on its goal of regulatory symmetry, pursuant to the directives of the Budget Act.<sup>5</sup>

RCA confines its comments to those issues directly applicable to its member companies -- the regulatory treatment of non-BOC, non-

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<sup>2</sup>/ Cincinnati Bell Telephone v. FCC, 69 F.3d 752 (6th Cir. 1995) ("Cincinnati Bell").

<sup>3</sup>/ Pub.L. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

<sup>4</sup>/ 47 U.S.C. §§ 272-72 (BOC interLATA services); 47 U.S.C. § 521(a) (BOC joint marketing of CMRS and landline services; 47 U.S.C. § 222 (confidentiality of carrier information and CPNI).

<sup>5</sup>/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §§ 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) (the "Budget Act").

Tier 1 telephone-affiliated rural cellular operators. R C A agrees with the Commission's tentative conclusions<sup>6</sup> that the costs associated with imposition of additional regulatory requirements on LEC-affiliated rural cellular operators far outweigh any plausible benefits. In addition, because the purpose of "regulatory parity" is to foster a level competitive playing field, the Commission's finding that small and rural telephone companies do not pose a significant anti-competitive threat to wireless competitors<sup>7</sup> justifies a discrete regulatory approach.

**II. The Commission's Continuing Recognition of the Distinct Role of Rural Telephone Companies Will Serve the Public Interest.**

In recognition of the crucial role which rural telephone companies historically have played in the deployment of advanced communications technologies in rural areas, the Commission consistently has adopted regulatory frameworks which encourage their participation by minimizing the regulatory burdens associated with the provision of service to the rural public.<sup>8</sup> The Commission

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<sup>6/</sup> See NPRM at paras. 13, 15, 92, and 115.

<sup>7/</sup> NPRM at para. 115.

<sup>8/</sup> For example, the Commission's Rules allow for small LEC access tariff filings under 47 C.F.R. § 61.49 and less detailed accounting requirements under 47 C.F.R. § 32.11. See also In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, released August 8, 1996; In the Matter of Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, CC Docket No. 96-45, released March 8, 1996; In the Matter of Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking, CS Docket No. 96-85, 11 FCC Rcd 5937 (1996). In the

has encouraged the participation of telephone companies, including rural telephone companies, in the development and deployment of new wireless services in recognition of their ability to provide service to the public promptly and efficiently. In the context of both cellular and Personal Communications Services ("PCS"), the Commission specifically found that LEC participation in wireless services can produce significant economies and promote rapid development and deployment.<sup>9</sup>

Under the existing cellular rules, RCA members have undertaken considerable investment and risk to bring the advantages of advanced wireless communications to rural areas. RCA submits that the imposition of additional structural, operational, or reporting burdens at this stage is unwarranted, particularly when the benefits of such actions are speculative (see Section III below). Speculative benefits clearly are outweighed by the public interest in the continued availability of economic competitive service.

**III. Additional Structural or Reporting Requirements for Rural LEC-Affiliated CMRS Providers Are Not Necessary.**

The structural separation requirements for the provision of cellular service originally were imposed on BOCs to prevent their

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Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd 5532 (1994).

<sup>9</sup>/ NPRM at para. 15, citing Broadband PCS Order (Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, 7748 n. 96 (1993)). See also Cellular Communications Systems, 86 FCC 2d 469, 493 (1981); Cellular Communications Systems, 89 FCC 2d 58, 71 (1982).

leveraging of market power in the local exchange market into the competitive cellular market.<sup>10</sup> At the time this requirement was enacted, the Commission specifically rejected imposition of structural separation requirements on independent and rural LECs because the costs "outweighed any possible public benefit."<sup>11</sup> There is no reason that this finding should be overturned.

In fact, the costs of imposing any additional regulatory burdens, whether structural, operational, or reporting, would be even greater today than at the initiation of cellular service. Where a business is already operating, the overlay of additional organizational, legal, accounting, or operational requirements will result in the direct costs of implementing these new requirements, as well as the significant indirect cost of disruptions to current operations.

Given the certainty that additional costs will result from additional regulation, the public benefit to be derived from the imposition of additional regulatory oversight must be identified and examined. The interconnect facilities and capabilities of rural LECs clearly differ from that of the BOCs or other Tier 1 carriers. Unlike BOC wireline operations, which span vast geographic areas and include highly urbanized centers, rural telephone companies serve smaller geographic and less densely populated areas. Moreover, it is less likely that a rural LEC-

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<sup>10</sup>/ NPRM at para. 10.

<sup>11</sup>/ NPRM at n. 141, citing Cellular Communications Systems, 89 FCC 2d 58,79 (1982).

affiliated cellular carrier's service area corresponds directly with its affiliate's wireline service area. As the Commission has noted, there is no clear indication that the public is at risk:

[N]or do we believe that [small, rural LECs] pose a significant threat of anticompetitive conduct toward potential wireless competitors, as their ability to leverage their bottleneck local exchange facilities is limited as compared to that of the BOCs and the larger independents.<sup>12</sup>

The Commission has stated that it does not wish to "unduly burden or discourage small telephone company entry into cellular and PCS markets . . . ." <sup>13</sup> The Commission should, therefore, refrain from imposing additional regulatory burdens on these carriers. RCA submits that the certain costs and uncertain benefits of achieving the goal of regulatory symmetry could jeopardize the public interest by discouraging the continued and increased participation of rural telephone companies which are "uniquely positioned to provide wireless services to populations which might otherwise not receive them."<sup>14</sup>

#### IV. Conclusion

It is clear that the imposition of additional regulatory burdens will only increase the cost of the provision of service by rural LECs without corresponding benefit to the public. Accordingly, RCA respectfully submits that the public interest will best be served by the Commission's adoption of a flexible

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<sup>12</sup>/ NPRM at para. 115.

<sup>13</sup>/ Id.

<sup>14</sup>/ Id.

regulatory approach which continues to encourage the provision of advanced telecommunications services to rural America.

Respectfully submitted,

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October 3, 1996